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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 273

[Amdt. No. 360]

RIN 0584-AB40

Food Stamp Program: Resource Provision From the Mickey Leland Memorial Domestic Hunger Relief Act of 1990

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends Food Stamp Program regulations to implement provisions contained in the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (the Leland Act) and the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 that expand the criteria by which a resource can be considered inaccessible. It finalizes provisions in a proposed rule published in the **Federal Register** on October 20, 1994.

DATES: This rule is effective September 20, 1995, and must be implemented no later than the first day of the first month beginning after December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, or by telephone at (703) 305-2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program ("Program") is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: 1) for program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; 2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); 3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This final rule has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Consumer Service (FCS) has certified that this proposal would not have a significant economic impact on a substantial number of small entities. State and local agencies that administer the Program will be the most affected. Food stamp applicants and recipients will be affected due to changes in excludable resources for purposes of the Food Stamp Program.

Paperwork Reduction Act

This action does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

The Mickey Leland Memorial Domestic Hunger Relief Act (Food, Agriculture, Conservation, and Trade Act of 1990, Title XVII, Pub. L. 101-624, 104 Stat. 3783); (hereinafter referred to as the Leland Act) made several changes to the Food Stamp Act of 1977, as amended (7 U.S.C. 2011, *et seq.*) (the Act). This rulemaking pertains to section 1719 of the Leland Act which amended section 5(g) of the Act, 7 U.S.C. 2014(g)(5), to expand the criteria by which property can be considered inaccessible to households in the calculation of their resources for purposes of food stamp eligibility. The Department originally published a proposed rule on August 13, 1991 at 56 FR 40164 regarding, in part, this Leland Act provision. The Department received twenty comments on the proposal to amend 7 CFR 273.8(e) to incorporate this provision. On December 13, 1991, section 904 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102-237, 105 Stat. 1818) (hereinafter referred to as the 1991 Technical Amendments) further amended section 5(g)(5) of the Act. The Department re-proposed the rule on the inaccessible resources provision on October 20, 1994 at 59 FR 52928 and provided the public with 90 days to comment on the proposed provision. For additional information on the provisions of this rule, the reader should refer to the preamble of the proposed rule, 59 FR 52928-31.

The Department received 12 comments on this proposed rule, 7 from State agencies and 5 from public interest groups. Three commenters supported the proposed rule as written. One commenter opposed the rule as written. The other commenters opposed or suggested modifications to one or more provisions of the proposed rule. These comments are discussed below.

Currently, regulations at 7 CFR 273.8(c) describe both liquid and non-liquid resources that are counted when determining a household's eligibility for food stamps. Non-liquid resources such

as land, buildings, and licensed and unlicensed vehicles, with some exceptions, are included as resources because they can be converted to cash. However, not all property can be easily sold, and this has posed significant problems for both State agencies administering the Food Stamp Program and households applying for benefits. Except for the provisions regarding vehicles, current regulations focus on the accessibility/inaccessibility of resources. In establishing inaccessibility, State agencies are compelled to require a household to verify that the property it owns, which is not otherwise an exempt resource, has little or no fair market value; cannot be sold because it is jointly owned with non-household members who are unwilling to sell; or is otherwise inaccessible. In many instances, households have found it difficult to provide this verification. Further, in establishing accessibility/inaccessibility, State agencies may be faced with questions of state property law and probate law. The situation was particularly difficult with heir property, i.e., an undivided fractional interest in a decedent's property. It is apparent that the treatment of heir property was the primary problem Congress was addressing when it passed section 1719 of the Leland Act, as the legislative history contained in House Report No. 101-569, 101st Congress, 2nd Session, Part 1, at 429-30, specifically refers to the problems of heir property encountered by food stamp applicants and State agencies.

Section 1719 of the Leland Act required the Department to promulgate regulations requiring State agencies to develop standards for identifying kinds of resources that, as a practical matter, a household is unlikely to be able to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great. Resources so identified were to be excluded as inaccessible resources for food stamp purposes.

In December 1991, section 904 of the 1991 Technical Amendments amended section 5(g)(5) of the Food Stamp Act by adding to the end of this paragraph the following new sentences: "A resource shall be so identified (as inaccessible) if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. The Secretary shall not require the State agency to require verification of the value of a resource to be excluded under this paragraph unless the State agency determines that the information

provided by the household is questionable."

The regulations at 7 CFR 273.8(d) already exclude jointly-owned resources that can be shown to be inaccessible. An example is a bank account that is jointly-owned by food stamp applicant household and non-household members which, by State law, is determined to be inaccessible wholly or in part to the food stamp household. Also, certain types of property are excluded from consideration as a resource including property that the household is making a good faith effort to sell (7 CFR 273.8(e)(8)). The Department believes that the amendments to section 5(g)(5) of the Act were not intended to supplant the existing regulations on inaccessible resources. Rather, these amendments were intended to provide an additional exclusion for resources such as heir property or other property which is unlikely to produce a significant return or significant funds for the support of the household.

One commenter, a State agency, opposed the rule as written, citing administrative complexity, inconsistency with AFDC, and inequities among food stamp recipients. The Department understands the State agency's concerns; however, it disagrees with the commenter about the rule. Given the legislative parameters, the Department believes it has crafted a regulation that gives States maximum flexibility to establish standards identifying a resource, not readily determined inaccessible under existing regulations, as inaccessible with a minimum amount of verification, without endangering program integrity.

Definition of "Significant Return" and "Any Significant Amount of Funds"

The Department proposed to define "any significant return" and "any significant amount of funds" as being one half the resource limit for the household. The Department received 5 comments addressing these definitions. Three commenters supported the definitions. Two commenters suggested that the definitions be modified to define "any significant return" and "any significant amount of funds" as being the appropriate resource limit for the household.

The Department has decided to keep the definitions as proposed. For food stamp purposes, households are permitted to have up to \$2,000 in resources (\$3,000 for households if at least one member is aged 60 or older). (For categorically-resource-eligible households, the issue of accessibility is irrelevant.) As was pointed out in the proposed rule, current data show that

the average value of countable resources for all food stamp households is less than \$100. Ninety-five percent of all food stamp households have \$1,000 or less in countable resources. As very few households participating in the food stamp program have resources exceeding \$1,000, the Department continues to believe that a resource that would yield a return of \$1,000 (or \$1,500, as appropriate) would be a significant return or a significant amount of funds for a household that is otherwise eligible for food stamps. Accordingly, the Department is adopting as proposed the definition of "any significant return" and "any significant amount of funds" at 7 CFR 273.8(e)(18) (i) and (ii).

Aggregation of Assets

Two commenters, both State agencies, recommended that all assets being considered for a determination as inaccessible be added together prior to the determination of inaccessibility and that the sum of those assets be used in the determination. The Department is not adopting this suggestion because the legislation is concerned with determining the inaccessibility of a specific resource, not the aggregate resources of a household. The Department understands the State agencies' concerns, specifically those concerns dealing with attempts by applicants to have resources declared inaccessible by sub-dividing one resource into multiple units, each of which has a net value of less than \$1,000. In developing their standards, State agencies should make it clear that a single resource cannot be sub-divided solely to apply to obtain an exclusion as inaccessible. Also, the Department would like to emphasize that this standard does not invalidate any other provision regarding jointly-owned resources and inaccessible resources, as described in 7 CFR 273.8(d). The Department expects that State agencies will continue to apply all the provisions in 7 CFR 273.8 concerning jointly-owned and inaccessible resources. The provisions of this rule are intended to apply only to those resources that do not readily meet the requirements in the other paragraphs of 7 CFR 273.8 for exclusion, but would not provide a significant return to the household if sold.

Negotiable Financial Instruments

The Department proposed in 7 CFR 273.8(e) to prohibit applying this provision to negotiable financial instruments. In the preamble, the Department indicated that financial instruments such as stocks and bonds

were to be considered for this purpose as negotiable financial instruments. One comment was received on this provision. That commenter pointed out that in that State, a "negotiable financial instrument" has a specific legal meaning and does not include financial resources such as stocks. The Department has revised the language of the provision to provide that financial resources such as stocks, bonds, and negotiable financial instruments are excluded from being considered an inaccessible resource under this provision. Thus, in the State in question, as in all other States, stocks and bonds are ineligible for designation as inaccessible resources.

Application of this Rule to Vehicles

Three commenters on the August 13, 1991 proposed rulemaking discussed whether or not vehicles could be identified as inaccessible resources under this provision. As discussed in the October 20, 1994 proposed rule, the Department believes that it is very clear from the statutory language and the legislative history of the inaccessible resource provision that it was not the intent of Congress to include vehicles. Five commenters, all public interest groups, disagreed with the Department's position. The Department continues to believe, for the reasons cited at length in the October 20, 1994 proposed rule, that its interpretation that this legislative provision does not apply to vehicles is the correct interpretation. Accordingly, the Department is adopting as final the prohibition against applying the provision to vehicles.

Quality Control

One commenter noted that the proposed rule did not address how quality control review would affect a situation in which a State agency had excluded a resource as unlikely for the household to sell for any significant return, and the eligibility worker had not required the household to provide any verification. The commenter has recommended that the resource should be excluded from the error determination if the resource is an appropriately excludable resource and the State agency did not deem the significant return questionable. The Department has considered this comment and agrees, in part. The Department agrees that any resource which meets the standards developed by the State agency to be considered unlikely to generate a significant return for the household must be excluded from the error determination process. However, the Department does not agree that the status of the resource, as either

included or excluded by quality control, should be based strictly on the information provided by the household, and on the eligibility worker's determination that this information is not questionable. One of the key aspects of the quality control review process is to determine a household's actual living circumstances for the period of time under review, regardless of the information reported by the household, or any determinations made by the eligibility worker. The Department has determined that any resources discovered in the course of the quality control review process which may be excluded because their sale would not generate a significant return to the household must be treated in the same manner as any other resource discovered by quality control. The resource must be examined by the quality control reviewer to determine whether or not the resource meets the standards developed by the State agency to be considered unlikely to generate a significant return for the household. Specific quality control guidance regarding the review of these resources shall be developed upon publication of this rule.

Implementation

The Department proposed that this rule be effective upon implementation by State agencies but in no event later than the first day of the first month beginning 120 days after publication of the final rule. The Department did not receive any comments on the implementation schedule as proposed. Accordingly, this action amends 7 CFR 272.1(g) to add a new paragraph to address implementation requirements for this final action.

Quality control variances resulting from implementation of the remaining provisions of this final rule will be excluded for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(12), as modified by 7 U.S.C. 2025(c)(3)(A).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation of Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(141) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(141) *Amendment No. 360.* This provision is effective September 20, 1995, and must be implemented no later than the first day of the first month beginning December 19, 1995.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.8, a new paragraph (e)(18) is added to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(18) State agencies shall develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or because the costs of selling the household's interest would be relatively great. A resource shall be so identified if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments, or to vehicles. The determination of whether any part of the value of a vehicle is included as a resource shall be handled using the provisions of paragraph (h) of this section. The State agency may require verification of the value of a resource to be excluded if the information provided by the household is questionable. The following definitions shall be used in developing these standards:

(i) "Significant return" shall be any return, after estimated costs of sale or disposition, and taking into account the ownership interest of the household, that is estimated to be one half or more of the applicable resource limit for the household; and

(ii) "Any significant amount of funds" shall be funds amounting to one half or more of the applicable resource limit for the household.

* * * * *

Dated: August 10, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95-20591 Filed 8-18-95; 8:45 am]

BILLING CODE 3410-30-U

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95-916-31FR]

Nectarines and Fresh Peaches Grown in California; Expenses and Assessment Rates for the 1995-96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) under M.O. Nos. 916 and 917 for the 1995-96 fiscal year. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: Effective beginning March 1, 1995, through February 29, 1996. Comments received by September 20, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, Fax # (202) 720-5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456, telephone: (202) 720-5127; or J. Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 916 [7 CFR Part 916] regulating the handling of nectarines grown in California and Marketing Agreement and Order No. 917 [7 CFR Part 917] regulating the handling of fresh peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable nectarines and peaches handled during the 1995-96 fiscal year, which began March 1, 1995, through February 29, 1996. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 handlers of nectarines and peaches regulated under the marketing orders each season and approximately 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these handlers and producers may be classified as small entities.

The nectarine and peach marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable nectarines and peaches handled from the beginning of such year. Annual budgets of expenses are prepared by the Committees, the agencies responsible for local administration of their respective marketing order, and submitted to the Department for approval. The members of the Committees are nectarine and peach handlers and producers. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing the anticipated expenses by expected shipments of nectarines and peaches. Because these rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the Committees' expected expenses.

The Nectarine Administrative Committee met on May 4, 1995, and unanimously recommended total expenses of \$3,683,031 for the 1995-96 fiscal year. In comparison, this is \$161,604 less than the \$3,844,635 expense amount that was recommended for the 1994-95 fiscal year.

The Committee also unanimously recommended an assessment rate of \$0.1850 per 25-pound container or equivalent for the 1995-96 fiscal year, which is \$0.5 cent higher than the assessment rate that was approved for the 1994-95 fiscal year. The assessment rate, when applied to anticipated shipments of 16,860,000 25-pound